

PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte Stern et al.
Appeal No. 2002-1332

OCT 06 2003

TC 1700

Applicant: Randolph A. Stern and Michael N. Byles
Serial No.: 09/558,329
Confirmation No.: 9722
Filed: April 25, 2000
Examiner: Cheryl Juska
Group Art Unit: 1771
Title: Stitch Bonded Fabric and Fluid-Retaining Fabric Made Therewith

Cincinnati, OH 45202

October 2, 2003

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**REQUEST FOR REINSTATEMENT OF APPEAL
AND
SUPPLEMENTAL APPEAL BRIEF**

I hereby certify that this correspondence is being deposited in triplicate with the U.S. Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on October 2, 2003.

Keith R. Haupt
Reg. No. 37,630

October 2, 2003
Date



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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SUPPLEMENTAL APPEAL BRIEF**

Applicants hereby request reinstatement of the appeal, and herewith submit this Supplemental Appeal Brief under 37 C.F.R. 1.193(b)(2) in response to the Office Action dated June 3, 2003 in the above-captioned matter.

A. BACKGROUND

After Appellants investigated substantial resources in presenting the issues to this Board on appeal, the case was remanded to the Examiner for consideration of certain law, and to better focus and narrow down the issues. It is

respectfully submitted that the Examiner has disregarded her obligations on remand, and instead, continues on a path which is believed aimed at simply piling on issues in an attempt to preclude Applicants from obtaining their lawful claims, irrespective of the law or the facts.¹

For example, as detailed in the original Appeal Brief, which is fully incorporated herein by reference, Examiner has misapplied the law of enablement. Rather than address the issue on appeal, this Board remanded with specific instructions to consider the issue in light of the Federal Circuit's decision in *In Re Wands*, 858 F.2d 731, 734-35, 8 USPQ 2d 1400, 1402 (Fed. Cir. 1988). The Examiner ignored that instruction, and instead merely reiterated her prior rejection without so much as even citing to *Wands*. Appellants will address the *Wands* factors below, since the Examiner did not.

Similarly, this Board instructed the Examiner to review the art for duplication and focus the issues. Again, this Board's instructions were ignored.

¹ The June 3rd Office Action is in response to the Board of Patent Appeals and Interferences' decision to remand this case to the Examiner because the case was not in condition for a decision on appeal. Accordingly, the Board instructed the Examiner to consider specified issues and take action not inconsistent with the Board's suggestions. However, in reviewing the Office Action of June 3rd and the views expressed by the Board in the remand, Appellants respectfully assert that few, if any, of the instructions offered by the Board on remand have been addressed in the Examiner's recent Office Action. Therefore, this Supplemental Appeal Brief will address the substantive issues identified by the Board and which have not been developed in the most recent Office Action or previously by the Examiner. Nevertheless, Appellants fervently assert that the rejections contained in the recent Office Action and prior Office Actions are unfounded and claims 1-87 pending in this case are both patentably novel and non-obvious over the prior art and satisfy the requirements of § 112, including the enablement requirement of paragraph 1 as fully and previously briefed by Appellants. Appellants incorporate herein by reference their prior briefs.

Instead, the Examiner has piled on even more rejections over the same set of art. So, again, Appellants and this Board will have to waste significant resources addressing clearly duplicative issues. Indeed, and as was shown in our earlier briefs and is detailed herein again, the Examiner simply ignores a term of the claim which fully resolves the issues. That term was ignored by the Examiner during prosecution, on appeal in the original briefing, and again on remand.

This case is a reissue application. Thus, the long delays in reaching final resolution are costing Appellants patent life. In all fairness to Appellants, the issues now need to be resolved by this Board, rather than by any further, and likely futile, remands to the Examiner.

B. Enablement Requirement

The Board instructed the Examiner to revisit the issue of enablement and further review the question of undue experimentation in light of the factors enunciated in the Federal Circuit's decision of *In Re Wands*, 858 F.2d 731, 734-35, 8 USPQ 2d 1400, 1402 (Fed. Cir. 1988). The Examiner has failed to address the relevant *Wands* factors in this case; therefore, Appellants will do so.

Claims 30-87 were rejected under 35 U.S.C. § 112, first paragraph as being allegedly based upon a disclosure which is non-enabling. Claim 30-87 are all of the claims which Appellants seek to add to U.S. Patent No. 5,902,757 (the "757 patent") in this reissue application. The enablement rejection states that: "the dual layer of hydrophobic/hydrophilic felt web critical or essential to the practice of the

invention, but not included in the claims is not enabled by the disclosure.” (Office Action dated June 3, 2003, para. 5, p. 3).

The Board has requested analysis of the enablement rejection with respect to the *Wands* factors as they relate to undue experimentation. The § 112 rejection wholly fails to address the issue of undue experimentation and the *Wands* factors. “The determination of what constitutes undue experimentation in a given case requires the application of a standard of reasonableness, having due regard for the nature of the invention and the state of the art.” *In re Wands*, 8 USPQ at 1494 citing *Ansul Co. v. Uniroyal, Inc.*, 448 F.2d 872, 878-79, 169 USPQ 759, 762-63 (2nd Cir. 1971), cert. den., 404 US 1018 (1972). The issue of undue experimentation with respect to satisfying the enablement requirement is not a simple factual determination, but is a conclusion arrived at by weighing many factual considerations. *Id.*

According to the Federal Circuit in *Wands*, the factors to be considered in determining if a disclosure requires undue experimentation include: (1) The quantity of experimentation necessary, (2) the amount of direction or guidance presented, (3) the presence or absence of working examples, (4) the nature of the invention, (5) the state of the prior art, (6) the relative skill of those in the art, (7) the predictability or unpredictability of the art, and (8) the breadth of the claims. *Id.* citing *Ex Parte Forman*, 230 USPQ 546, 547 (Bd. Pat. App. & Int. 1986). The Federal Circuit subsequently noted that all of the *Wands* factors need not be reviewed when determining whether a disclosure is enabling. *Enzo Bio-Chem, Inc. v. Calgene, Inc.*, 52 USPQ2d 1129, 1135 (Fed. Cir. 1999). Nevertheless, Appellants will proceed with an analysis of the *Wands*

factors with respect to claims 30-87, which analysis will show that undue experimentation is not needed and those claims are enabled.

1. The Quantity of Experimentation

Appellants respectfully assert that little, if any, experimentation is necessary to produce a product according to claims 30-87 and any such experimentation is routine to those of ordinary skill in the art.

The rejected claims are directed to a stitch-bonded facing fabric, an incontinent pad, a fluid retaining fabric and the like which generally include a felt web and a plurality of stitch-bonding yarns repeatedly extending through the felt web and across upper and/or lower surfaces of the felt web to form top and bottom yarn faces, respectively. The Examiner's enablement rejection is directed to the issue of whether a felt web as described in claims 30-87 could be developed based upon the disclosure in the '757 patent. The '757 patent identifies numerous felt web options and countless more options would be readily available to one of ordinary skill in the art without any experimentation. At its most basic level, the felt web may constitute a simple bat of felt material; alternatively, the felt web may include hydrophobic felt and/or hydrophilic felt as described in claims 1-29. The undeniable fact is that one of ordinary skill in the art of incontinent pads and similar products would readily utilize any number of felt web materials to practice the invention of claims 30-87, including but not limited to layers of hydrophobic/hydrophilic materials as disclosed in the '757 specification. Therefore, Appellants respectfully assert that no experimentation would be necessary for one of ordinary skill in the art to practice the invention of claims 30-87.

2. Direction/Guidance Presented in the '757 Patent

Completely sufficient and adequate direction and guidance are presented in the '757 patent for one of ordinary skill in the art to practice the invention of claims 30-87 without undue experimentation. Initially, Appellants note that working examples according to claims 30-87 are explicitly provided in the '757 patent, which examples happen to have the hydrophobic/hydrophilic features. Additional direction and guidance are presented throughout the application. Specifically, in the description of prior art section of the '757 patent, Appellants own prior product is identified under the trademark COMPLY® as "an integral web fabric that provides hydrophobic upper surface and hydrophilic lower surface in wicking communication with the upper surface." (Col. 1, Ins. 30-32.) The felt in that product is a conventional felt. As such, the identification of the COMPLY® product, as well as other prior art, explicitly guides one skilled in the art to a felt web which satisfies the requirements of claims 30-87. Similarly, there are embodiments shown which have two layers of felt, one hydrophobic and one hydrophilic. That is certainly sufficient direction to an ordinarily skilled artisan, that but one layer of either type could be used.

The '757 patent provides more than adequate guidance and direction for one skilled in the art to practice the invention of claim 30-87 without undue experimentation. One of ordinary skill in the art is readily direct to use hydrophobic felts or hydrophilic felts, as well as the combination thereof, the latter being the preferred embodiment. There is no basis to limit this case to the preferred embodiment under the present circumstances where the ordinarily skilled artisan is readily directed to the

broader context of "felt". Therefore, Appellants respectfully assert that this *Wands* factor is likewise satisfied.

3. The Presence or Absence of Working Examples

As previously discussed, the '757 patent explicitly includes working examples of the invention defined by claims 30-87. The '757 patent provides a disclosure of the COMPLY® product which satisfies the felt web requirement of claims 30-87. Additionally, the '757 patent discloses two different layers of felt stitch-bonded together as well as one stitch-bonded ply with two different aspects. Any of these working examples satisfy the requirements of claims 30-87. One of ordinary skill in the art would likewise understand that these working examples, as well as other known products in the prior art, would satisfy the requirements of claims 30-87 without undue experimentation.

4. The Nature of the Invention

Appellants' invention is an improved fluid-retaining product. Such products are typically employed at hospitals to retain fluids expelled from the body while also protecting bed linens and the like. The vast majority of all prior art products of this type include a separate facing fabric and a felt web or felt layer quilted to the facing fabric. Typical prior art incontinent pads have a knitted or woven facing fabric, such as cotton (i.e., Birdseye) to which is quilted a felt layer. The function of the facing fabric is as the name implies, to confront or face the user and provide a comfortable surface

against the user's skin. The facing fabric might also absorb some fluids, but the bulk of the fluid is to be held in the felt, which also provides some stiffness to the product. In the same way, the felt web in the present invention retains much of the bodily fluids. But the stitch-bonded yarn face provides both a barrier layer for separating the user's skin from the fluid retained in the web, as well as its own mechanism for holding that "face" to the felt (i.e., it eliminates the need to create a face web, and then separately quilt it to the felt).

The present invention is thus provided by stitch-bonding a felt web (typically of one or two layers) with stitch-bonding yarns. The stitch-bonding yarns define top and/or bottom "yarn faces" of the fabric with the top yarn face presenting a patient comfort surface and the bottom yarn face providing a surface such as for adhesive connection to a barrier layer without interfering with the structural rigidity or absorbency provided by the felt web. The stitch-bonding yarns applied to the felt web provides yarn faces which were previously provided with the techniques of separately knitting or weaving an additional layer of facing fabric and then quilting it to the felt web. This was a costly and labor-intensive procedure. The nature of this invention is to create through stitch-bonding a less labor-intensive facing fabric with the yarn faces and thereby avoiding the need for the additional layer of facing fabric. By virtue of this invention, an improved facing fabric is provided that incorporates the advantageous features of a felt layer without the added cost of separate manufacture of the facing fabric and the felt as well as the still further added cost of the quilting process.

5. The State of the Prior Art

The prior art with respect to felt webs as they relate to stitch-bonded facing fabrics and incontinent pads is extremely well established. Appellants do not contend that the invention of claims 30-87 presents a significant advancement in the art with respect to the felt web feature of the invention. The novelty of Appellants' invention rests in the yarn faces of the facing fabric in a fluid retaining product such as an incontinent pad or the like. The yarn faces are provided by the stitch-bonded yards extending through the felt web as presented throughout the entire disclosure of the '757 patent. Therefore, the state of the prior art with respect to the felt web feature of Appellants' invention is extremely well established, predictable and readily understood and recognized by those of ordinary skill in the art. Therefore, this feature of Appellants' invention with respect to the state of the prior art would require no experimentation.

6. Relative Skill of those in the Art

Persons of ordinary skill in the art readily recognize the capability and characteristics of felt webs, hydrophilic materials, hydrophobic materials and related structures. *See Milliken Research Corp. v. Dan River, Inc.*, 222 USPQ 571, 582 (Fed. Cir. 1984) ("The knowledge and skill of a skilled knitter are of a high caliber. He is able and expected to adopt and supplement general instructions in the construction sheet for a particular fabric and its manufacture."). Based upon the relatively high skill level in this art, the amount of guidance or direction required in the disclosure of the '757 patent

to enable the invention is low. The development of textile products such as those described in claims 30-87 involves the understanding of stitching technology and the production of quilted or otherwise textile related products. Those skilled in the art must appreciate the importance of textile manufacturing techniques, efficiencies and costs implications for various products and modifications to those products. The ability to substitute facing fabrics with the stitch-bonded yarn faces of Appellants' invention involves the realization of these features in an incontinent pad or other textile product according to the invention of claims 30-87 and the associated manufacturing and cost implications.

Nevertheless, the highly predictable nature of this invention, the state of the prior art, the presence of working examples, the quantity of experimentation necessary, and the amount of direction/guidance presented in the '757 patent offer significant assistance to those highly skilled practitioners in this art to practice the invention of claims 30-87 without undue experimentation.

7. Predictability of the Art

The present invention is directed to stitch bonded fabric and fluid retaining fabric which are used in incontinent pads. This art is not a chemical related art in which the results of experiments are not predictable. The invention is most related to mechanical arts in which the results of experiments are highly predictable. As such, where the results are predictable, broad claims, such as claims 30-87, can be enabled by the disclosure of a single embodiment of the invention. *Spectra-Physics, Inc. v. Coherent, Inc.*, 3 USPQ2d 1737, 1743 (Fed. Cir. 1987). The Board has also

acknowledged that claims which are directed to inventions in predictable arts, such as those of claims 30-87, may cover more than the specific embodiment disclosed in the specification. *Ex Parte Alan J. Knobbe et al.*, Appeal No. 92-1191, pg. 4 (PTO Board of Patent Appeals and Interference, 1992) citing *In re Vickers*, 61 USPQ 122 (CCPA 1944) and *In re Newton*, 163 USPQ 34 (CCPA 1969). Much of the case law in the area of enablement relates to the highly unpredictable chemical and biotechnology arts. Therefore, when presented with the inventions of claims 30-87 which are in a highly predictable art, broad claims such as these are supported under § 112 by a relatively few disclosed embodiments.

The amount of guidance or direction required to enable an invention is inversely related to the amount of knowledge in the state of the art as well as the predictability in the art. *In re Fischer*, 427 F.2d 833, 839, 166 USPQ 18, 24 (CCPA 1970). The information in the '757 patent teaches one of ordinary skill in the art readily how to manufacture an incontinent pad, a stitch-bonded facing fluid retaining fabric according to claims 30-87. As significant amount of knowledge is readily available to those skilled in the art about the nature of such inventions and how to make and use them. One skilled in the art can readily anticipate the effective as a change such as the substitution of any felt web with the felt webs disclosed in the '757 patent thereby establishing predictability in the related art.

8. Breadth of the Claims

With respect to the felt web, claims 30-87 are broader than claims 1-29 which recite various hydrophilic/hydrophobic properties for the web. However, even a single embodiment of a felt web as described in the '757 patent provides broad enablement for technology such as those involved in the claims of the present invention. Those of ordinary skill in the art would find it obvious from the disclosure of the preferred embodiment of the felt web in the '757 patent how other felt webs would work within the invention of claims 30-87.

Claims 30-87 are clearly broader in scope with respect to the felt web feature than claims 1-29. However, a claim is not invalid for lack of enablement simply because it reads not only on the disclosed embodiment of the invention, but also on other embodiments which may or may not be disclosed in the specification. See *Gould v. Mossinghoff*, 219 USPQ 393, 396 (D.C. Cir. 1983), *aff'd*, 3 USPQ2d 1302 (Fed. Cir. 1987). A broad claim can be enabled by the disclosure of a single embodiment because the enablement requirement does not require that the specification disclose every embodiment covered by the claim. Claims 30-87 recite a felt web without specific properties, but, nevertheless, are enabled by the '757 patent.

The enablement requirement is met if the description in the '757 patent enables one of ordinary skill in the art any mode of making and using a stitch-bonded fabric, incontinent pad or the like. *The Johns Hopkins University v. Cellpro, Inc.*, 152 F.3d 1342, 1361, 47 USPQ2d 1705, 1719 (Fed. Cir. 1998). Appellants submit that the invention is not limited to any critical or essential feature of the felt web as asserted by

the Examiner. Claims 30-87 are broader than the hydrophilic/hydrophobic felt materials recited in claims 1-29. Nevertheless, Appellants respectfully assert that the '757 patent is fully enabling with respect to claims 30-87 because one of ordinary skill in the art would readily be able to identify a vast array of felt webs or felt layers without undue experimentation that could be utilized in the invention of claims 30-87. Indeed, some of the claims, in essence, read on the top half or the bottom half of the disclosed embodiment, and thus are fully enable in any event.

9. Conclusion on Enablement

Therefore, as clearly demonstrated herein, a thorough analysis of the *Wands* factor with respect to claims 30-87 demonstrates that undue experimentation is not required in light of the '757 patent for one of ordinary skill in the art to practice those inventions. Therefore, the conclusion is compelled that the breadth of enablement of the '757 patent specification is commensurate in scope with claims 30-87 as the quantity of experimentation required to practice those inventions is not undue.

Finally, with respect to the undue experimentation analysis, Appellants wish to highlight the fact that the Examiner has admitted that one skilled in the art would not require undue experimentation to determine suitable felt webs for this invention. See Examiner's Answer, pg. 14, lns. 19-22. Therefore, Appellants reiterate that the § 112 rejections are baseless and that one reasonably skilled in the art could readily make and use the invention of claims 30-87 from the disclosure of the '757 patent coupled with information known in the art without undue experimentation.

C. Prior Art Rejections

The Board on remand addressed specific issues with respect to the prior art rejections and requested clarification. Appellants acknowledge that the inconsistency with respect to the Sternlieb anticipation rejection has been clarified in the Office Action of June 3, 2003. Appellants remain steadfastly convinced that each of the prior art rejections are unfounded when the claims are properly interpreted as demonstrated in the Appeal Brief and Reply Brief.

Upon remand, the Board has also invited the Examiner to consider whether the Ott reference is appropriately applied to the claims. In so doing, the Board cautions the Examiner that claim rejections must not be cumulative according to MPEP § 706.02. Merely cumulative rejections are described in § 706.02 as being those which would clearly fail if the primary rejection were not sustained. Such cumulative rejections should be avoided. Appellants respectfully assert that the Examiner continues to present not only baseless but multiple and cumulative rejections in that none of the prior art references of record teaches, discloses or otherwise suggests a “yarn face” on the top and/or bottom surface of the felt web. A detailed explanation of the novel and non-obvious yarn face of claims 1-87 is presented in the Appeal Brief, Reply Brief and previous responses to Office Actions in this case. Those are incorporated herein by reference.

The crux of the prior art rejections in this case is the Examiner’s improper interpretation of the term “yarn face” in the claims. The Examiner continues to fail to give proper patentable significance to the term “yarn face” as developed in the ‘757 patent. The meaning of the term “yarn face” and its scope would be readily understood

by a person of ordinary skill in this field based upon the disclosure in the '757 patent. The term "yarn face" does not have meaning divorced from the context from which it arises and the term "yarn face" is clearly explained in the '757 patent. Nevertheless, the Examiner continues to present unfounded baseless and cumulative rejections based upon the primary references of Sternlieb, Leftkowitz, Ott and Gillies. When the claims are properly viewed in terms of the recited yarn face, each of the primary rejections based on these references would fail and, as such, the subsidiary rejections are not only unfounded, but cumulative. In fact, in direct contravention to the instructions by the Board, the Examiner has added still further rejections based upon the same cited references.

A summary of the rejections provided in the final Office Action of April 26, 2001 in comparison to the rejections in the Office Action of June 3, 2003 is enclosed herewith as Exhibit A. The chart of Exhibit A clearly demonstrates that not only are the rejections which were originally appealed to the Board cumulative, the Examiner has added additional cumulative rejections under § 103 based on Ott in combination with the Examiner's Official Notice. This is unfortunate in light of the Board's admonition to avoid cumulative rejections and specifically with respect to the Ott reference. Nevertheless, Appellants address this newest rejection based on Ott.²

Specifically, claims 2, 10, 11, 13, 21, 22, 31, 52, 57, 60 and 67 were recently rejected under 35 U.S.C. § 103(a) as being unpatentable over the cited Ott patent in combination with the Examiner's Official Notice. The Examiner in the Office

² As the issues regarding the other cited art have already been fully explored in the prior briefing, the Board is respectfully referred to those briefs.

Action acknowledges that Ott fails to teach the use of a reinforcing scrim as recited in claims 2, 13, 31, 52, 60 and 67. Nevertheless, the Examiner has taken Official Notice that it is common and well known in the art to use scrims to reinforce non-woven materials and that it would have been obvious to utilize a reinforcing scrim in the wiper material of Ott. In response to such rejection, Appellants respectfully traverse. Moreover, Appellants respectfully challenge the Official Notice in the rejection that it is known to provide scrims to reinforce non-woven materials as in the rejected claims. Therefore, Appellants respectfully demand evidence proving the Official Notice cited in the Office Action.

In this regard, Appellant would like to note the admonition provided by the CCPA on this point:

[T]his court will always construe [the rule permitting judicial notice] narrowly and will regard facts found in such manner with an eye toward narrowing the scope of any conclusions to be drawn therefrom. Assertions of technical facts in areas of esoteric technology must always be supported by citation to some reference work recognized as standard in the pertinent art and the appellant given, in the Patent Office, the opportunity to challenge the correctness of the assertion or the notoriety or repute of the cited reference. Cf. In re Cofer, 53 CCPA 830, 354 F.2d 664, 148 USPQ 268 (1966), In re Borst, 52 CCPA 1398, 345 F.2d 851, 145 USPQ 554 (1965). Allegations concerning specific "knowledge" of the prior art, which might be peculiar to a particular art should also be supported and the appellant similarly given the opportunity to make a challenge. See In re Spormann, 53 CCPA 1375, 363 F.2d 444, 150 USPQ 449 (1966). In re Pardo and Landau, 214 USPQ 673, 677 (CCPA 1982) citing In re Ahlert, 57 CCPA 1023, 1027, 424 F.2d 1088, 1091, 165 USPQ 418, 420-21 (1970).

As previously detailed, the Ott patent is directed to a stitch-bonded composite wiper having strength and absorbency performance characteristics and other advantageous features for a variety of industrial, institutional and health care wiping

uses. The Ott patent discloses that the preferred stitch used in that product is a length of 3 mm and is spaced in the cross-web direction at 14 stitch lines per inch or 14 gauge (col. 3, lns. 31-34). The stitch density of the wiper disclosed in Ott is very low and is not consistent with a yarn face according to Appellants' claimed invention. The low stitch density necessarily creates large open gaps rather than an effectively continuous face as in Appellants' claimed yarn face.

Once again, Appellants submit that when properly construed, the term "yarn face" is to be considered effectively continuous and each of the claims rejected based upon Ott and the other cited references are distinguishable on this basis.

In this Supplemental Appeal Brief, Appellants will not reiterate the fallacies of each of the prior art rejections presented by the Examiner. Such issues are clearly demonstrated in the Appeal Brief and Reply Brief previously submitted to the board. Nevertheless, since the above-identified § 103 rejection based upon Ott in combination with the Official Notice is newly presented in the June 3, 2003 Office Action, Appellants have specifically addressed and refuted that rejection herein.

In summary, the prior art documents cited in the Office Action of June 3, 2003 with respect to claims 1-87 fail to disclose, teach or otherwise suggest a "yarn face" at the top and/or bottom surface as in Appellants' claimed invention. The teaching of these prior art patents would lead one of ordinary skill in the art directly away from Appellants' claimed invention in which the stitch-bonding yarn segments contribute to define top and/or bottom yarn faces that are effectively continuous such that the web is not exposed. Moreover, one of ordinary skill in the art would readily be able to optimize the stitch density relative to the selected stitch thickness or denier for a

particular application to achieve the yarn faces as described in the rejected claims. For all these reasons, Appellants respectfully assert that claims 1-87 are neither anticipated by nor rendered obvious in view of the cited references.

D. Defective Oath/Declaration

The recent Office Action asserts that the Oath/Declaration is defective with respect to the citizenship of inventor Michael M. Byles. Appellants have obtained a new Oath/Declaration in which the citizenship of inventor of Michael M. Byles is clarified. Enclosed herewith is a copy of that new Oath/Declaration and Appellants will provide the original to the Examiner upon return of this case to the Examiner after this Board's decision.

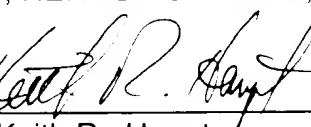
E. Conclusion

For the reasons stated, Appellants respectfully urge the Board to reverse the rejection of claims 1-87.

Respectfully submitted,

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Claim Rejection Comparison Chart
U.S. Reissue Patent Application Serial No. 09/558,329
Ex Parte Randolph A. Stern and Michael N. Byles

Prior Art Rejection	Claims Applied in Final Office Action of 4/26/01 Before Remand from Board	Claims Applied in Office Action of 6/3/03 After Remand from Board
§ 102 Sternlieb	65, 67-69	65, 67-69
§ 102 Lefkowitz	30-37, 51-64	30-37, 51-64
§ 102 Ott	30, 32-37, 51, 53-56, 58, 59, 61-66, 68, 69	1, 3-9, 12, 14-20, 30, 32-38, 51, 53-56, 58, 59, 61-66, 68, 69
§ 102 Gillies	30, 32-36, 39, 41, 42, 46-51, 53-56, 65, 68, 69, 80, 83, 84, 86, 87	30, 32-36, 39, 41, 42, 46-51, 53-56, 65, 68, 69, 80, 83, 84, 86, 87
§ 103 Gillies & Ott	1, 3-9, 12, 14-20, 23, 26-29, 37, 38, 43, 58, 61-64, 66, 70, 71, 73, 74, 76-79, 81	1, 3-9, 12, 14-20, 23, 26-29, 37, 38, 43, 58, 61-64, 66, 70, 71, 73, 74, 76-79, 81
§ 103 Ott & Examiner's Official Notice		2, 10, 11, 13, 21, 22, 31, 52, 57, 60, 67
§ 103 Gillies & Ott	10, 11, 21, 22, 57	10, 11, 21, 22, 57
§ 103 Gillies & Ott & Lefkowitz & Kyle	25	25
§ 103 Gillies & Taylor	40, 82	40, 82
§ 103 Gillies & Ott & Taylor	24, 72	24, 72
§ 103 Gillies & Sternlieb	31, 44, 45, 52, 67, 85	31, 44, 45, 52, 67, 85
§ 103 Gillies & Ott & Sternlieb	2, 13, 59, 60, 75	2, 13, 59, 60, 75
§ 103 Kyle & Gillies, Ott &/or Sternlieb	1-23, 25-39, 41-71, 73-81, 83-87 83-87	1-23, 25-39, 41-71, 73-81, 83-87
§ 103 Kyle & Gillies, Ott &/or Sternlieb & Taylor	24, 40, 72, 82	24, 40, 72, 82